

APPEAL NO. 020101
FILED FEBRUARY 27, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 14, 2001. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that the respondent (carrier) is relieved from liability under Section 409.002 because the claimant did not timely notify his employer of the claimed injury pursuant to Section 409.001; and that the claimant did not have disability. On appeal, the claimant expresses disagreement with these determinations. The carrier urges affirmance.

DECISION

Affirmed.

The claimant asserts that the introduction of evidence relating to his criminal record resulted in "stereotyping." After reviewing the record, we find no evidence substantiating this assertion nor indicating that the hearing officer was biased against the claimant based on his criminal record. The claimant points out on appeal that the hearing officer, in Finding of Fact No. 3, misidentifies him as a floor hand on the date of injury. While we note that the record reflects that the claimant's employment classification on _____, technically was not a floor hand, we perceive no error in the hearing officer using this general term to describe the claimant's work duties in the oil and gas industry. Furthermore, there is no indication that the hearing officer based the compensability determination, even in part, on the claimant's job description.

The other matters complained of by the claimant involve credibility and fact issues, which were for the hearing officer to resolve. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. We have reviewed the complained-of determinations and we conclude that they are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing are affirmed.

The true corporate name of the carrier is **AMERICAN GUARANTY & LIABILITY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

TIM McGUIRE
9330 LBJ FREEWAY, SUITE 1300
DALLAS, TEXAS 75243.

Chris Cowan
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

CONCURRING OPINION:

I concur with the majority and write separately to briefly address one of the claimant's points on appeal, namely, that the hearing officer, in effect, treated him unfairly by considering the evidence of his felony conviction. It is well-settled that the credibility of a claimant, as an interested party, is always in issue at a contested case hearing. Texas Workers' Compensation Commission Appeal No. 931001, decided March 8, 1994. The hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), is at liberty to give whatever weight is deemed appropriate to evidence of a felony conviction in considering the credibility of a claimant's testimony. See, e.g., Texas Workers' Compensation Commission Appeal No. 92699, decided February 8, 1993 (Unpublished).

Philip F. O'Neill
Appeals Judge